

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

OP.No. 35759 of 2000(F)

PETITIONER:

1. **MADATHIL ABDULLA KOYA, CLERK,
PADINHATTUMMURI AMSOM, MORIKKARA
DESOM, KAKKODI VILLAGE, KOZHIKODE TALUK.**
2. **MADATHIL ALI KOYA, TEACHER, DO. DO. DO.**
3. **MADATHIL ABOOBACKER, DO. DO. DO.**
4. **VALLIL POKKER, P.O. KAKKODI, CALICUT.**

**BY ADV. SRI.GOVIND K.BHARATHAN
SRI.C.P.KUNJHIKANNAN
SRI.B.PRAVEEN**

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY TO GOVERNMENT,
THIRUVANANTHAPURAM.**
2. **THE DISTRICT COLLECTOR, KOZHIKODE.**
3. **THE PROJECT OFFICER, OVERSEAS ECONOMIC
CO-OPERATION FUND (OPEC), KERALA WATER
AUTHORITY, MALAPPARAMBA, KOZHIKODE.**
4. **THE SPEICAL THASILDAR (LA) KOZHIKODE.**

**BY GOVERNMENT PLEADER SHRI BASANT BALAJI R1, 2 AND 2
BY ADVOCATE SHRI BABU VARGHESE, SC, KWA R3**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TEUE COPY OF THE NOTIFICATION REF. NO.B.6/98 DATED 17.3.1998 PUBLISHED BY THE 4TH RESPONDENT.

EXHIBIT P2 TRUE COPY OF THE COUNTER AFFIDAVIT IN O.P. NO.10467/98-U DATED 15.2.2000 FILED ON BEHALF OF THE FIRST RESPONDENT.

EXHIBIT P3 PHOTOCOPY OF PLAN (NOT TO SCALE) OF THE AREA SHOWING THE LOCATION OF THE CALICUT-BALUSSERY ROAD, THE LAND PROPOSED TO BE ACQUIRED, THE KAKKODI RIVER AND THE PANCHAYAT OFFICE, SEPTIC TANK, URINAL ETC.

EXHIBIT P4 PHOTOCOPY OF THE REPRESENTATION TO THE DISTRICT COLLECTOR ON 28.1.1998 SENT BY THE PETITIONERS 2, 3 & 4.

EXHIBIT P5 PHOTOCOPY OF THE JUDGMENT IN O.P. NO.2818 OF 1985 DATED 27.7.1987 OF THIS HONOURABLE COURT.

EXHIBIT P6 PHOTOCOPY OF THE NOTIFICATION PUBLISHED IN THE MATHRUBHUMI DAILY CALICUT EDUCATION DATED 8.7.2000 PROPOSING TO ACQUIRE THE SAID LAND UNDER THE PROVISIONS OF THE KERALA LAND ACQUISITION ACT, 1894.

EXHIBIT P7 TRUE COPY OF THE SKETCH SHOWING THE EXISTING ALIGNMENT AND THE PROPOSED ALIGNMENT.

ANNEXURE 1 TO IV PHOTOGRAPHS

ANNEXURE V PHOTOCOPY OF THE BILL DATED 15.11.2006 ISSUED BY THE STUDIO FOR HAVING TAKEN PHOTOGRAPHS

RESPONDENTS' EXHIBITS:

NIL

K. PADMANABHAN NAIR ,J.

O.P.No.35759 of 2000 F

Dated, this the 25th day of October, 2007

JUDGMENT

Petitioners are owners of property comprised in re-survey No.19/2 of Kakkodi Village in Padinhattummuri amsom, Morikkara desom of Kozhikode Taluk. It is having an area of one acre and 20 cents. An area of 30 cents was acquired by the Government in the year 1962 for forming a flood bank. According to the petitioners thereafter a notification was issued by the Land Acquisition Officer which is produced and marked as Ext.P1. That notification was challenged by the petitioners in O.P.No.10467/1998. Subsequently that proceedings lapsed on account of the fact that no declaration was issued within one year from the date of Section 4(1) notification. Thereafter another proposal was made for acquisition. Challenging that proposal one K.K.Unneeri had filed Original Petition as O.P.No.2818/1985 and that proposal was also dropped. It is averred that thereafter Ext.P6 notification under Section 4(1) of the Land Acquisition Act (for short 'the Act') was issued. It is averred that the purpose stated in Exts.P6 and P1 is one and the same and the respondents had invoked Section 17(4) of the Act. Challenging that notification this Original Petition is filed.

2. According to the petitioners if the present proposal is accepted the water supply line will be circuitous and for which the Government will have to spend a lot of money. It was averred that that will be passing through an area

having very commercial importance and even very close to a shopping complex. So the petitioners have made Ext.P4 representation before the District Collector, Kozhikode suggesting two alternate alignments. According to the petitioners the third petitioner is an Assistant Executive Engineer who was working in Kerala Public Works Department and because of his experience he can very well assert that the alternate alignments suggested are very viable and economical. Hence they prayed for quashing Ext.P6 notification.

3. The third respondent alone filed counter affidavit. Initially the third respondent filed counter affidavit on 28.8.2002. Thereafter another counter affidavit was filed on 12.8.2004. The third counter affidavit was filed on 13.12.2006. The third respondent raised various contentions. The importance of the project and its component parts, etc. are stated in the affidavits. It is contended that land acquisition works were completed and possession was taken and handed over to Water Authority on 22.3.2001. It is also averred that the land was now in the possession of the Kerala Water Authority. It was averred that the right to take usufructus from the acquired land was sold in public auction by the Kerala Water Authority in the year 2001. Learned counsel appearing for the third respondent produced a copy of the Gazette notification issued on 4.7.2001 in which a declaration under Section 6(1) of the Act was published.

4. It is submitted by the counsel for the third respondent that challenging the very same notification other land owners filed Original Petitions.

It is also submitted that O.P.No.6126/1999 was filed by another land owner. This Court considered the matter on merits. It is argued that in that case also the main argument raised was that the alignment is to be changed. This Court took note of the fact the present alignment was fixed by M/s.Tata Consultancy Engineers and the proposed pipe line has to serve the Kozhikode City and adjoining Villages where there is acute shortage of water. This Court also held that this Court has no expertise to determine the suitability of changing the pipeline or the alignment thereto. It is very pertinent to note that there is no allegation of any malafides against any officers. So I am also of the view that it is not just and proper to consider the suitability of the alternate alignments proposed by the petitioners at this stage especially in view of the fact that the acquisition proceedings were already over. No grounds are made out to interfere with the acquisition proceedings. It is only to be dismissed.

In the result, Original Petition is dismissed.

**K. PADMANABHAN NAIR,
JUDGE.**

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OP No.35759/2000

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K.PADMANABHAN NAIR, J.

O.P.No.35759 of 2000 F

JUDGMENT

25th October, 2007.